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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION TWO**

In re G.B., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

G.B.,

Defendant and Appellant.

E070703

(Super.Ct.No. SWJ1700542)

OPINION

APPEAL from the Superior Court of Riverside County. Sean P. Lafferty, Judge.

Affirmed as modified.

John L. Staley, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland and James M. Toohey, Deputy Attorneys General, for Plaintiff and Respondent.

I

INTRODUCTION

Defendant and appellant, G.B. (minor), along with two coparticipants, cut through the side of a gun safe in the victims' home and stole firearms, jewelry, and \$30,000 in cash. Minor admitted to committing a residential burglary (Pen. Code, §459) and grand theft (Pen. Code, § 487, subd. (a)). In return, the juvenile court granted minor deferred entry of judgment. After a contested victim restitution hearing, the court ordered victim restitution in the amount of \$34,900.50. On appeal, minor argues the juvenile court abused its discretion in determining the value of the destroyed safe and the stolen firearms because the amounts ordered were not for "like property" as required by Welfare and Institutions Code¹ section 730.6. For the reasons explained below, we find the juvenile court erred in its restitution award as to the stolen firearms and will modify the restitution award accordingly. We reject minor's contention as to the destroyed safe.

II

FACTUAL AND PROCEDURAL BACKGROUND²

On October 15, 2017, while the victims were away from their home for several days on vacation, minor and two coparticipants cut open a gun safe in the victims' home and stole multiple guns, jewelry, and approximately \$30,000 in cash.

¹ All future statutory references are to the Welfare and Institutions Code unless otherwise stated.

² The factual background is taken from the probation officer's reports.

On October 19, 2017, a section 602 petition was filed charging minor, who was then 16 years old, with residential burglary (Pen. Code, § 459) and grand theft (Pen. Code, § 487, subd. (a)).

On November 3, 2017, minor admitted both allegations in the petition. In return, the juvenile court granted minor deferred entry of judgment on various terms and conditions.

On May 2, 2018, the juvenile court held a contested restitution hearing. At that time, the victims testified that they had left on vacation to Las Vegas, and when they returned home, they found their home burglarized. They also stated that the safe was destroyed and approximately \$30,000 in cash and jewelry were taken from the safe. The victims' testimony primarily focused on the amount of cash that was stolen. There was no testimony about the value of the gun safe or the firearms. The trial court considered the applications and orders for restitution submitted by the probation department. The insurance company estimated the replacement value of the firearms at \$1,329.91 and the replacement value of the gun safe at \$1,321.20. The victims estimated the replacement value of the firearms at \$980 and the replacement value of the gun safe at \$1,499.

Defense counsel also submitted documents disputing the restitution amounts. At the hearing, defense counsel argued the insurance company's estimate for the gun safe in the amount of \$1,321.20 was for a bigger safe with better fire protection (a 60-gun safe with 60-minute fire protection) than the model that was destroyed. Defense counsel offered a document that showed a safe she considered comparable (a 60-gun safe with

30-minute fire protection) for \$609.68 at Walmart. Based on her internet research, defense counsel also asserted the replacement value of the firearms was approximately between \$700 and \$765. Specifically, defense counsel pointed out the replacement value of one of the firearms, an Orbea Hermanos Argentine Police Revolver, was between \$100 and \$165 and not the \$350 claimed by the victims. Defense counsel also contended the insurance estimate for the value of the firearms in the amount of \$1,329.91 was based on guns (a Sig Saur 1911 and a Ruger .38) that were far superior to the stolen guns and thus the value was inflated. Defense counsel noted the guns the insurance company valued were not comparable to the stolen firearms, which were an Orbea Hermanos Argentine Police Revolver and a Ballester Molina 1911. Defense counsel further claimed that the victims' testimony about the stolen cash was not credible because of the lack of supporting evidence and the conflicting testimony about the denominations. Defense counsel therefore asked the juvenile court to deny restitution for the cash and to reduce the amounts requested for the safe and the firearms. The prosecutor argued restitution should be ordered in the amount requested by the victims.

On May 11, 2018, the juvenile court issued a written order for restitution in the amount of \$34,900.50 for the destroyed safe, stolen jewelry, firearms, and cash. Specifically, the court ordered \$1,329.91 for the replacement of the firearms and \$1,423.59 for replacement of the gun safe. In reaching its decision, the court's order stated it considered the victims' testimony, documentary evidence submitted by all the parties, and the arguments of counsel in determining the restitution amounts. For the

replacement value of the firearms, noting it had “broad discretion,” the court’s order stated it considered the evidence presented, the age of the firearms, and the insurance approximation of replacements. As to the value of the gun safe, the court found the insurance company estimate to be “reasonable and approximates the loss and valuation in replacing [the victims’] safe.” The court also included tax and shipping costs for the safe based on the victims’ request for the loss. The court also ordered \$28,268 for the stolen cash and \$3,879 for the stolen jewelry. In conclusion, the court’s order stated it “considered the testimony and documentary evidence presented, as well as the circumstances involved in the offense committed by the co-participants and conclude[d] that the amounts listed above appropriately reflect restitution owed to the [victims], *and* will serve the rehabilitative purposes of the order in reminding the minor of the financial consequences that he created through his conduct.” Minor was therefore ordered to pay jointly and severally \$34,900.50 in victim restitution.

On June 13, 2018, minor filed a timely notice of appeal.

III

DISCUSSION

Minor argues the trial court abused its discretion in determining the replacement value of the destroyed safe and the stolen firearms because the replacement value for those items were not “like property” within the plain language of section 730.6. Minor also asserts that the court’s ruling violated his right to due process of law. We find the

court erred in its restitution award as to the stolen firearms but reject minor's contention as to the safe.

A. *Standard of Review*

The court's restitution order must be sustained unless it rests upon a demonstrable error of law or constitutes an abuse of discretion. (*In re S.S.* (1995) 37 Cal.App.4th 543, 550.) Thus, we generally review a restitution order for abuse of discretion and conduct a de novo review to the extent the propriety of such an order turns on the interpretation of a statute. (See *In re Alexander A.* (2011) 192 Cal.App.4th 847, 852 (*Alexander A.*))

A victim's right to restitution is to be broadly and liberally construed. (*In re Johnny M.* (2002) 100 Cal.App.4th 1128, 1132.) When there is a factual and rational basis for the amount of restitution ordered by the trial court, the reviewing court will find no abuse of discretion. (*Ibid.*) A juvenile court is required to exercise its discretion, in crafting a restitution order, to ensure it is consistent with the goal of the juvenile justice system, which is "to provide minors under the jurisdiction of the court with care, treatment, and guidance that is consistent with their best interests and to hold them accountable for their behavior as appropriate under the circumstances, consistent with the interests of public safety and protection." (*Alexander A.*, *supra*, 192 Cal.App.4th at p. 853.) Therefore, a juvenile court applies the delinquency law (including its restitution provisions) with due consideration of the safety and protection of the public, the importance of redressing injuries to victims, and the best interests of the minor. (*Ibid.*)

B. *Juvenile Restitution*

“Enacted in 1982, Proposition 8, the ‘Victims’ Bill of Rights,’ amended the California Constitution to provide that ‘all persons who suffer losses’ resulting from crime are entitled to ‘restitution from the persons convicted of the crimes causing the losses.’ (Cal. Const., art. I, § 28, subd. (b)(13)(A).) In 1983, the Legislature enacted Penal Code section 1202.4, which requires a full victim restitution order in criminal cases for every determined economic loss unless there are compelling and extraordinary reasons not to do so. [Citation.] In 1994, the Legislature enacted [Welfare and Institutions Code]section 730.6 to provide ‘parallel restitutionary requirements for juvenile offenders.’ [Citation.]” (*Luis M. v. Superior Court* (2014) 59 Cal.4th 300, 304.)

When a minor is adjudged a ward of the juvenile court under section 602, the court is generally required to order the minor to pay restitution to the victims, if any. (§ 730.6, subds. (a)(1) & (a)(2)(B).) Such restitution is to be imposed in the amount of the victim’s losses, in a “dollar amount sufficient to fully reimburse the victim . . . for all determined economic losses incurred as the result of the . . . conduct” for which the minor was adjudged a ward. (§ 730.6, subd. (h).) The value of economic loss arising from “damaged property shall be the *replacement cost of like property*, or the actual cost of repairing the property when repair is possible.” (§ 730.6, subd. (h)(1)(A), italics added.)

The purpose of requiring a minor to pay restitution directly to the victim is for its deterrent value, as well as its rehabilitative effect; the requirement is more likely to make an impression on the minor than the imposition of a statutory fine. (*In re Brittany L.*

(2002) 99 Cal.App.4th 1381, 1387.) The nuts and bolts of computation are within the court’s broad grant of discretion. In fixing the amount of a restitution order for property damage under section 730.6, subdivision (h)(1), “the amount . . . cannot be arbitrary or capricious [but] “there is no requirement the restitution order be limited to the exact amount of the loss [as to which the minor] is actually found culpable.”” (Brittany L., at p. 1391.) The juvenile court may “[i]ndeed . . . use any rational method of fixing the amount of restitution, provided it is reasonably calculated to make the victim whole, and provided it is consistent with the purpose of rehabilitation. In doing so “[s]entencing judges are given virtually unlimited discretion as to the kind of information they can consider and the source from whence it comes.”” (Id. at pp. 1391-1392, fns. omitted; accord, *People v. Thygesen* (1999) 69 Cal.App.4th 988, 992 (*Thygesen*) [“While it is not required to make an order in keeping with the exact amount of loss, the trial court must use a rational method that could reasonably be said to make the victim whole, and may not make an order which is arbitrary or capricious.”]; *People v. Ortiz* (1997) 53 Cal.App.4th 791, 800 [there is no requirement the restitution order be limited to the exact amount of the loss in which the defendant is actually found culpable, nor is there any requirement the order reflect the amount of damages that might be recoverable in a civil action]; *People v. Akins* (2005) 128 Cal.App.4th 1376, 1382 [same]; *People v. Chappelone* (2010) 183 Cal.App.4th 1159, 1172-1173 [same] (*Chappelone*).) “The trial court is not required to order restitution equal to the exact amount of the loss,” and need

only “employ a rational method that makes the victim reasonably whole.” (*People v. Garcia* (2011) 194 Cal.App.4th 612, 617.)

An owner’s testimony may establish the value of stolen property, even without any supporting documentation. (Evid. Code, § 813, subd. (a); *People v. Prosser* (2007) 157 Cal.App.4th 682, 690-691; *People v. Foster* (1993) 14 Cal.App.4th 939, 947, superseded by statute on other grounds as recognized in *People v. Birkett* (1999) 21 Cal.4th 226, 238-242.) “[S]tatements by the victims of the crimes about the value of the property stolen constitute “prima facie evidence of value for purposes of restitution.” [Citations.]’ . . . Once the victim has made a prima facie showing of his or her loss, the burden shifts to the defendant to demonstrate that the amount of the loss is other than that claimed by the victim.” (*Prosser*, at pp. 690-691; *People v. Fulton* (2003) 109 Cal.App.4th 876, 886.) The defendant has the burden of rebutting the victim’s statement of losses, and to do so, may submit evidence to prove the amount claimed exceeds the repair or replacement cost of damaged or stolen property. (*People v. Gemelli* (2008) 161 Cal.App.4th 1539, 1543.) These rules recognize that crime victims may not have saved receipts or other documentation showing the nature or value of stolen property, and therefore it is fair to place the burden on the thief to rebut the owner’s testimony, particularly because the defendant had possession of the stolen property for at least a brief period. (*Prosser*, at p. 691.)

C. *Analysis*

In this case, as minor acknowledges, the safe and firearms could not be repaired. As such, the juvenile court had to use a rational basis to determine the replacement cost of “like property,” or the replacement cost of the stolen firearms and damaged safe. (§ 730.6, subd. (h)(1).) Minor argues that the juvenile court erred in its restitution award as to the firearms and the safe because the court failed to consider the replacement cost of “like property” and instead relied on the insurance company’s estimates of superior property.

Regarding the firearms, the trial court noted that the victims reported the loss of an Orbea Hermanos Argentine Police Revolver described to be in “fair condition,” as well as a Ballester Molina 1911 described to be in “excellent condition.” The court also indicated that the victims had requested a \$980 valuation for the two weapons, “while the insurance company appraised the replacement value at \$1,329.91—albeit *for two different brands in new condition.*” The court further pointed out that minor and his coparticipants had offered evidence to demonstrate the resale values of the same firearms to be \$765 in total. Although the court appropriately relied on the insurance company’s estimates of the replacement value of the firearms, we find that the court erred in overcompensating the victims for the losses of the guns. (*Chappelone, supra*, 183 Cal.App.4th at p. 1172 [a restitution order should compensate a victim for actual losses but it should not overcompensate a victim with a windfall award]; *Thygesen, supra*, 69 Cal.App.4th at p. 995 [“As to a victim, the purpose of the restitution statute is to make

that victim whole, not to give a windfall. . . . If [the victim] were a car rental agency that lost a 1995 Ford Taurus, it would be entitled to the replacement value of a similar 1995 Ford Taurus, not a 1999 model.”].)

Chappelone, supra, 183 Cal.App.4th 1159 is instructive. In that case, the defendants stole merchandise from the victim, a Target department store. Most of the stolen merchandise was damaged or broken, intended to be donated, given away for free, or returned to the vendor. (*Chappelone*, at p. 1178.) Despite the unmarketable nature of much of the stolen merchandise, the trial court awarded Target the value of the merchandise at its last retail price. (*Ibid.*) The appellate court reversed the restitution award, finding that Target had received “a sizable windfall, a windfall the law simply does not allow.” (*Id.* at p. 1185.) For instance, merchandise that Target had intended to give away for free was nonetheless valued by the trial court at its last retail or clearance price—giving Target a 100 percent windfall in many instances. (*Id.* at p. 1174.)

Although the windfall here is not “a sizeable windfall” as in *Chappelone*, the victims nonetheless received a windfall. Moreover, the court based its restitution award for the firearms using “two different brands in new condition.” Indeed, the juvenile court acknowledged in its written restitution order that it based its restitution award for the firearms using “different” firearm “brands in new condition.” As such, the court did not base its calculation for the firearms using “like property.” (§ 730.6, subd. (h)(1).) We will therefore modify the restitution award for the firearms to \$980, as requested by the victims and as agreed to by minor in his opening brief.

As to the safe, the court appropriately relied on the insurance company's estimates of the replacement value of the property. The replacement cost for the safe identified by the insurance company estimate was for a larger capacity safe (a 60-gun capacity) with a greater fire protection period (60-minute protection) than the safe destroyed by minor and his coparticipants (a 24-gun capacity safe with 30-minute fire protection). However, the court did not abuse its discretion in finding that, despite the differences, the replacement safe was still considered "like property." Section 730.6, subdivision (h)(1), does not require identical property but "like property." Indeed, as the court noted in its restitution order, defense counsel had also submitted documentation for a 60-gun safe with 30-minute fire protection. Although not identical to the destroyed safe, minor clearly considered it comparable. Furthermore, the court appropriately added taxes and shipping costs to the value of the safe to fully reimburse the victims as required by the statute. (*Alexander A.*, *supra*, 192 Cal.App.4th at p. 858 [taxes and fees appropriate consideration in restitution award]; *People v. Stanley* (2012) 54 Cal.4th 734, 739 [our Supreme Court affirmed a restitution award requiring the defendant to pay the repair cost of the victim's vandalized truck, even though the repair cost was nearly three times the amount of the purchase price because a court acts within its discretion by awarding the amount needed to make the victim whole].)

Minor argues the juvenile court should not have relied upon rehabilitation as a justification for the restitution award because he had “learned his lesson and regretted his conduct” and the “restitution award did not need to be inflated to rehabilitate him.” In support, minor cites to favorable language from the probation officer indicating his involvement in the crimes was “less serious” than his coparticipants and that he was remorseful for his conduct. We reject minor’s contention. Even if minor’s role was “less serious” than his coparticipants, the court appropriately considered the rehabilitative purpose of the restitution order. Moreover, minor committed two felony offenses during which he actively participated in the destruction of a safe and the theft of its valuable contents from a stranger’s home. In addition, the court noted minor’s remorsefulness in granting deferred entry of judgment. Contrary to minor’s contention, the court did not inflate the restitution award as to the destroyed safe and the jewelry and cash stolen from the safe. Rather, the court rationally relied on the factual basis set forth in the insurance company’s estimates for the replacement value of the damaged safe. The court did not abuse its discretion when it appropriately invoked minor’s rehabilitation as a justification for its restitution award to remind minor of the severe financial consequences of his criminal misconduct. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1124 [restitution is effective rehabilitative penalty because it forces the defendant to confront, in concrete terms, the harm his actions have caused].)

D. *Due Process*

Minor also makes a perfunctory due process argument that the juvenile court's failure to follow section 730.6's replacement cost requirement constituted a violation of his federal and state due process rights. We reject this contention.

First, minor forfeited his due process claim by not raising it during the restitution hearing. (*People v. Partida* (2005) 37 Cal.4th 428, 435 [defendant forfeited due process argument if not raised in trial court].) Second, even if the claim is not forfeited, minor received due process. A defendant's limited due process rights at a restitution hearing are satisfied if the probation report provides notice of the claimed restitution amount and the defendant has the opportunity to challenge those amounts at a hearing. (*People v. Cain* (2000) 82 Cal.App.4th 81, 86.) A trial court violates a defendant's due process rights at a restitution hearing only if the hearing procedures are fundamentally unfair. (*Id.* at p. 87.) Here, minor does not dispute he was provided notice of the claimed restitution amount. In addition, the juvenile court held a contested restitution hearing during which minor's counsel called the victims of his theft as witnesses. Minor's counsel also submitted documentation that disputed the claimed restitution amounts and argued why lesser amounts should be imposed. The record clearly indicates minor was afforded due process. Moreover, minor's contention is unavailing because "[A] mere error of state law" is not a denial of due process. (*Rivera v. Illinois* (2009) 556 U.S. 148, 158.)

IV

DISPOSITION

The restitution award as to the stolen firearms is modified to \$980. Hence, the total restitution award is modified to \$34,550.59 as follows: cash in the amount of \$28,268; firearms in the amount of \$980; jewelry in the amount of \$3,879; and safe in the amount of \$1,423.59. As modified, the restitution order is affirmed.

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CODRINGTON
Acting P. J.

We concur:

FIELDS
J.

RAPHAEL
J.